

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-697

October 23, 2000

BANGOR GAS COMPANY, LLC
Proposed Cost of Gas Adjustment
(\$4703)

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We deny the Maine Oil Dealers Association (MODA) and Sprague Energy (Sprague) petitions to intervene in this proceeding.

II. BACKGROUND

On August 15, 2000, Bangor Gas Company LLC (Bangor Gas) filed its proposed cost of gas adjustment (CGA) for the winter 2000-2001 period. The Hearing Examiner issued a Notice of Proceeding setting the deadline for intervention and a preliminary hearing on the case.

On September 25, 2000, MODA and Sprague Energy filed timely petitions to intervene in this proceeding. These petitioners request that intervention be granted jointly or, if necessary, severally. Bangor Gas filed its objection to these interventions on September 27, 2000. The Hearing Examiner invited further discussion of this matter among the parties at the preliminary hearing and technical conference held on September 28, 2000 and deferred ruling on the matter to allow for further consideration. Also at the preliminary hearing, the Hearing Examiner granted full intervention to the Office of the Public Advocate and limited intervention to Maine Natural Gas, LLC.

III. LEGAL STANDARDS

Pursuant to Chapter 110, § 750(g) of the Commission's Rules of Practice and Procedure, only the Commission may deny a petition to intervene. Under section 723, the Commission may deny a petition to intervene if the petitioner fails to show a direct and substantial interest in the proceeding. Under section 721, the Commission may grant discretionary intervention to any interested person not entitled to intervene. We discuss these standards further in our analysis below.

IV. POSITIONS OF THE PARTIES

MODA's petition states that it is a non-profit trade organization representing petroleum marketing companies which sell over 95% of the heating oil and gasoline in Maine or are heating service or equipment contractors, manufacturers, wholesalers, and retailers. Sprague states that it is a major supplier of energy products in the eastern U.S., including petroleum, natural gas, and electricity, and supplies both petroleum and natural gas to customers in Maine.

In their petitions, MODA and Sprague state that, as consumers, retailers and wholesalers of petroleum and natural gas products, they will be directly and substantially affected by any Bangor Gas cost of gas adjustment and seek full party status. However, at the hearing they indicated that they had no interest in the actual rate proposed for approval by Bangor Gas. Rather, the petitioners argue that disclosure of various details regarding Bangor Gas' pricing and practices relating to both the CGA and its 10-year rate plan should be reviewed to ensure that the competitive playing field for gas supply will be fair. Petitioners observe that "In the Order approving Bangor Gas' 10-year rate plan, many important details concerning the actual operation of the plan relative to the requirements for filing the CGA under this plan were necessarily postponed until the time of the CGA filing." Petitioners listed twelve issues that they seek to explore.

In its objection, Bangor Gas argues that MODA and Sprague Energy, simply as competitors of Bangor Gas, lack standing to intervene in a rate proceeding as determined by the Maine Law Court in *Central Maine Power Company v. Public Utilities Commission*, 382 A.2d 302, 311-314 (Me. 1978). Bangor Gas argues, citing *Eastern Maine Electric Cooperative, Inc. v. Maine Yankee Atomic Power Co.*, 225 A.2d 414, 415 (Me. 1967), that the legal effect of this ruling is to preclude the Commission even from granting the petitioners intervention in this proceeding as a matter of discretion. Bangor Gas further argued that, to the extent that the Commission determines the petitioners' issues merit further review, the Commission could open a generic proceeding.

On October 4, 2000, Sprague Energy filed a response to Bangor Gas's objection. In it, Sprague states that, as the owner of a deep water terminal in Bucksport with related plant heating and boiler equipment, it is a prospective customer of Bangor Gas with a direct and substantial interest in the issues raised in this case and legal standing to intervene.

V. ANALYSIS

At the preliminary hearing, in response to the Hearing Examiner's inquiry, MODA indicated that very few of its members are suppliers of natural gas in Maine. Sprague Energy is one that is. Both MODA and Sprague stated that they

do not contest Bangor Gas's proposed CGA rate or filed proposal but are interested in clarification of other matters relating to the specifics of Bangor Gas's operations, service terms, and rates, some of which could impact future CGAs or the competitive playing field. Some of these issues may lead to policy decisions.

The Law Court decisions cited by Bangor Gas make clear as a matter of law, that a "mere" competitor of a utility is not entitled to mandatory intervention in Commission rate setting proceedings. This is because the competitor is affected indirectly in the competitive arena, as compared to the direct impact on a customer of the utility who will be charged the rates set in the proceeding for services he or she receives. Chapter 110, section 720, entitled "Mandatory Intervention," states that

...any person that is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding...shall be allowed to intervene as a party to the proceeding.

However, we disagree with argument put forth by the Company that the Commission cannot allow competitors to intervene in its proceedings as a matter of discretion. Chapter 110, § Section 721(2) states:

Any interested person not entitled to intervene pursuant to section 720 may in the discretion of the Commission be allowed to intervene and participate as a full or limited party to the proceeding.

The distinction between the Commission's discretion to allow intervention and intervention of right was confirmed in *Central Maine Power Company, Re: Petition for Certificate of Public Convenience and Necessity for Purchases of Generating Capacity and Energy from Hydro-Quebec*, Order Concerning Intervention, Docket No. 87-268 (Dec. 10, 1987). The Commission frequently allows persons to intervene who are not entitled to mandatory intervention, when it determines the petitioner may be of assistance to the Commission in evaluating the utility proposal or issues in the case.

Under this analysis, MODA is not entitled to intervene and would be allowed discretionary intervention only if the Commission determines that it would assist it in its consideration of the issues in the case to allow the intervention. MODA represents, in substantial part, propane and heating oil fuel suppliers that are engaged in market competition with natural gas suppliers.

Sprague Energy's avowed status as a potential customer, as well as a natural gas competitor seeking to provide natural gas services within Bangor Gas's service territory, distinguish Sprague from MODA. The expectation that potential customers would have a stronger interest in the rates and service terms

established in Commission proceedings than would an entity that is not a potential customer presents a stronger basis for intervention. However, it is not as strong an interest as if Sprague were a current or, at least, an imminent customer. The extent to which Sprague's self-assessment as a potential natural gas commodity customer of Bangor Gas is a matter of theory versus a realistic possibility has not been tested, yet it seems unlikely given that Sprague Energy is itself a natural gas supplier. We also note that it is possible that, depending on its size and load requirements, were Sprague to take service from Bangor Gas for its Bucksport operation, it would do so under a special contract arrangement, rather than pay the tariffed rate.

Furthermore, we might find participation by a natural gas supplier, concerned about utility practices or Commission policies that could impact or impede the natural gas market development within Maine, useful in our review of utility rates or tariffs, depending on the issues at hand. Sprague has outlined a list of issues with which, as a competitor, it is concerned. The question then, is to what extent are these issues related to the determination of the pending CGA proposal.

In this circumstance, both MODA and Sprague clearly stated at the preliminary hearing that they were not interested in contesting the CGA rate or gas supply plan that Bangor Gas has filed for approval in this case. Tr. at A-17, ln. 16-17 (Pye); A-21, ln. 19-20 (Withka). This appears to confirm that Sprague Energy does not have a strong interest in this case as a potential customer. The issues raised by the staff and OPA at the technical conference focussed on the proposed rate and Bangor Gas's proposed supply arrangements for the upcoming season, not on underlying details of Bangor Gas's accounting, rate, and service terms. Noting that the petitioners are not directly interested in the CGA rate proposal pending in this case, Bangor Gas urged the Hearing Examiner to consider those issues, if at all, in a separate proceeding.

VI. CONCLUSION

In this case, we review Bangor Gas's proposed change in its cost of gas rate and its proposal to obtain needed supply for the 2000-2001 winter season from a market supplier. These issues are not contested by the petitioners. Moreover, neither MODA nor Sprague Energy has made a persuasive case for intervention as of right.

We also conclude that the issues raised by MODA and Sprague for consideration in this proceeding, while potentially valuable in another context, are not directly relevant to the pending case. However, they are useful questions that we may wish to explore more fully with Bangor Gas because they touch on details of rate and service provision that may require clarification for regulatory purposes or that could impact the development of a competitive natural gas market in the Bangor region. If so, Sprague, and other sufficiently interested

persons or competitors might be allowed intervention in such a proceeding subject to ensuring that the utility's sensitive business information is adequately protected. We would extend this investigation to other utilities in the state as policy matters warrant.

Therefore, we see no basis or purpose in granting the petitioners' requests for intervention in this case. In the exercise of our discretion, pursuant to Chapter 110, Section 721, we deny the petitioners intervention in this docket.

Dated at Augusta, Maine, this 23rd day of October, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.